

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

By Award dated April 13, 1995, the Administrative Law Judge denied claimant permanent partial general disability benefits in Docket No. 165,901, but awarded permanent partial general disability benefits for a thirty percent (30%) work disability in Docket No. 166,881. The respondent and insurance carrier filed a request for review in the latter docket number and now request the Appeals Board to review the finding of nature and extent of disability. The claimant requests the Appeals Board to review the issue of whether both docket numbers are subject to review, or whether the respondent can limit the review to only the latter docket number. Those two issues are now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed.

The parties stipulated that claimant sustained injury to her neck while working for the respondent during the period of August 5, 1991 through April 1, 1992. The principal issue in this proceeding is whether claimant is unable to perform, or restricted from performing, jobs requiring repetitive motions. Because there is substantial testimony from Salina neurosurgeon Ali B. Manguoglu, M.D., who was one of claimant's principal treating physicians, regarding claimant's difficulties with repetitive type work and his major concerns that she would reinjure her neck by engaging in that type of activity, the Appeals Board finds that claimant is restricted from performing repetitive type work and that restriction should be considered in determining her loss of ability to perform work in the open labor market and loss of ability to earn a comparable wage.

Claimant's vocational rehabilitation expert, Richard Santner, believed Dr. Manguoglu had restricted claimant from jobs requiring repetitive motion and factored that restriction into his opinions of loss of ability to perform work in the open labor market and loss of ability to earn a comparable wage, whereas respondent's vocational rehabilitation expert, Karen Terrill, did not. The Appeals Board finds Mr. Santner's opinions more persuasive. Therefore, the Appeals Board finds claimant has sustained an approximate forty-three percent (43%) loss of her ability to perform work in the open labor market and a loss of her ability to earn a comparable wage in the range of twenty to twenty-seven percent (20-27%) as a result of her neck injury.

Because she has sustained a "non-scheduled injury", claimant is entitled permanent partial general disability benefits under the provisions of K.S.A. 1991 Supp. 44-510e. The statute provides in pertinent part:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to

perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment."

The Appeals Board is not required to weigh equally loss of access to the open labor market and loss of ability to earn a comparable wage. See Schad v. Hearthstone Nursing Center, 16 Kan. App. 2d 50, 52-53, 816 P.2d 409, rev. denied 250 Kan. 806 (1991). The Appeals Board finds the thirty percent (30%) work disability found by the Administrative Law Judge to be reasonable and considers it to be an appropriate basis for the award in this case.

Based upon the above findings, the issue whether the respondent may request review of only one proceeding when two separately docketed cases are consolidated by the Administrative Law Judge is rendered moot.

The Appeals Board adopts the findings and conclusions of the Administrative Law Judge that are not inconsistent with those specifically set forth in this order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated April 13, 1995, should be, and hereby is, affirmed.

In addition, claimant is entitled to request future medical upon proper application to the Director.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Topeka, Kansas
C. Stanley Nelson, Salina, Kansas
Gail L. Carpenter, Great Bend, Kansas
George R. Robertson, Administrative Law Judge
David A. Shufelt, Acting Director